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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947.

No. 87.

ORSEL McGHEE AND MINNIE S. McGHEE, his wife,
Petitioners,

v.

BENJAMIN J. SIPES AND ANNA C. SIPES, JAMES A. COON AND ADDIE A. COON, ET AL., *Respondents.*

BRIEF FOR RESPONDENTS.

HENRY GILLIGAN,
JAMES A. CROOKS,
Attorneys for Respondents.

December 1, 1947.

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CASES CITED.

CONSTITUTION AND STATUTES.

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BRIEF FOR RESPONDENTS.

Petitioners' Statement of the Case is substantially correct.

STATEMENT OF THE FACTS.

Respondents deem a more detailed Statement of the Facts than that of petitioners desirable.

Respondents Benjamin J. Sipes, Anna C. Sipes, and others own and occupy property located in Seebaldt's subdivision and Brooks & Kingdon's subdivision on Seebaldt Avenue, between Firwood and Beechwood Avenues, in the City of Detroit.

Petitioners Orsel McGhee and Minnie S. McGhee, his wife, Negroes, own and occupy property located on the same street in Seebaldt's subdivision. All of the properties occupied by the parties hereto are encumbered by the following recorded covenant:

> "This property shall not be used or occupied by any person or persons except those of the Caucasian race."

Mutual agreements imposing the above restriction, covering many more than the required 80 per cent of the property fronting on both sides of Seebaldt Avenue, were recorded in the office of the register of deeds of Wayne County on September 7, 1935. The deed running to petitioners, dated November 30, 1944 and recorded December 1, 1944, is "subject to existing restrictions as of record." Recourse to the courts followed their refusal to move from the property.

SUMMARY OF THE ARGUMENT.

1. The restrictive agreement is valid and enforceable in equity by injunction.

   (a) The restrictive agreement creates an equitable right arising under contract and its validity is uniformly recognized.

   (b) Restrictive agreements are compatible with the declared public policy of the State of Michigan; there is no applicable Federal policy.

   (c) The Fourteenth Amendment of the Constitution of the United States and implementing statutes do not prohibit judicial enforcement of the restriction.

2. Social and political problems of a State must be addressed to the legislature—not the courts.

ARGUMENT.

1. The Restrictive Agreement is Valid and Enforceable in Equity by Injunction.

(a) The restrictive agreement creates an equitable right arising under contract and its validity is uniformly recognized.

Primarily, petitioners attack the validity of the restrictive agreement here involved on the ground that it denies them their property in contravention of the Fourteenth Amendment of the Federal Constitution and implementing legislation. It would appear they call upon the full context of the Amendment, but the cases cited by them largely relate to the "due process clause" of that Amendment. Clearly they misconceive the true meaning of the Amendment as demonstrated by the consistent adjudications of this Court relating thereto; they confuse *state* action with *private* action.

There is a fundamental and important distinction between Constitutional limitations on a State and the freedom of contract among private individuals relating to private property.

The properties owned by respondents and petitioners were impressed with a restriction in the form of a contract, duly recorded among the land records, restricting for a limited period of time the use and occupancy of all the properties included therein to persons of the Caucasian Race. It is conceded by petitioners they took title with notice of the restriction, and that they had no pre-existing rights therein.

What then can they claim to be their right to use and occupy the property in the face of a pre-existing enforceable right in others whose properties are burdened with a like restriction, reciprocal as to all?

They rely on the case of *Buchanan* v. *Warley*, 245 U. S. 60, which involved the constitutionality of an ordinance of the City of Louisville, Kentucky, which undertook to legis-

late the separation of the races by limiting the sale and use of property in residential districts. The sole issue was whether this was a legitimate exercise of the police power of the State. This Court decided the case squarely on that point, at page 82:

> "We think this attempt to prevent the alienation of the property in question to a person of color was not a legitimate exercise of the police power of the State, and is in direct violation of the fundamental law enacted in the Fourteenth Amendment of the Constitution preventing state interference with property rights except by due process of law. That being the case the ordinance cannot stand."

This case involved an attempt by the legislature to limit the ownership, and necessarily the use, of property. Similarly, in *Harmon* v. *Tyler*, 273 U. S. 668 and *City of Richmond* v. *Deans*, 281 U. S. 704, the States attempted by somewhat different forms to accomplish the same result by legislation. The legislation in each case was invalidated by a *per curiam* decision of this Court on the authority of *Buchanan* v. *Warley, supra.*

It can only be deliberate error on petitioners' part to urge that these decisions give credence to their contentions. This Court did no more than recognize that *legislative* action of a State, based solely on color, was repugnant to the Fourteenth Amendment forbidding any State to deprive any person of life, liberty or property without due process of law. But this is not to say that private contracts, whether in the form here involved, or of other types, are repugnant to that Amendment.

And in 1944, consistent with the decision in *Buchanan* v. *Warley*,[1] this Court, in construing the New York Civil Rights Act, providing for non-discrimination in labor union membership because of collective bargaining, stated:

> "A judicial determination that such legislation violated the Fourteenth Amendment would be a distortion

[1] 245 U. S. 60.

of the policy manifested in that Amendment *which was adopted to prevent State legislation* designed to perpetuate discrimination on the basis of race or color." (Italics supplied) *Railroad Mail Ass'n.* v. *Corsi*, 326 U. S. 88.

The Fourteenth Amendment is a direct prohibition on State action and has no reference to the actions of individuals in their relations one with another. This distinction has been consistently recognized.

Slaughter House Cases, 16 Wall. 36
U. S. v. *Cruikshank*, 92 U. S. 542
In Re. Virginia, 100 U. S. 313
Virginia v. *Rives*, 100 U. S. 313
U. S. v. *Harris*, 106 U. S. 629
Plessy v. *Ferguson*, 163 U. S. 537

The Supreme Court of Michigan in this case recognized this fundamental difference between the acts of a State under the Federal Constitution and the acts of individuals relating to their private rights. This suit is not based on a statute of the State, nor is petitioners' defense based on a statute of the State. The rights being asserted by respondents are those fundamental rights which guarantee to all citizens the freedom to contract with respect of their property and, with the assurance that if such contracts are not repugnant to the Constitution and statutes, both Federal and State, they will be enforced.

Neither the Congress nor the Michigan Legislature has adopted any statutes which are addressed to the right of individuals to contract with respect of their property in the manner here involved. Under similar circumstances the State courts have uniformly sustained the validity of restrictive agreements entered into by individuals with respect of their property,[2] and it is now a recognized rule

[2] Burkhardt v. Lofton (1944) 63 Cal. App. (2d) 230, 146 P. (2d) 720; Shileler v. Roberts (1945) 69 Cal. App. (2d) —, 160 P. (2d) 67; Stone v. Jones (1944) 66 Cal. App. (2d) 264, 152 P. (2d) 19; Los Angeles Investment Co. v. Gary, 181 Cal. 680, 186 P. 596; Chandler v. Zeigler (1930) 88 Colo. 1, 291 P. 822; Steward v.

of property. The Supreme Court of Michigan has recognized that such restrictions on the use and occupancy of private property are valid.[3] In *Parmalee* v. *Morris, supra*, the Michigan Court, in disposing of the contention that a similar restriction was repugnant to the Constitution and discriminatory, sustained the injunction issued by the trial court:

> "We think the counsel has entirely misapprehended the issue involved. Suppose the situation was reversed, and some negro who had a tract of land platted it and stated in the recorded plat that no lot should be occupied by a Caucasian, and that the deeds that were afterwards executed contained a like restriction; would any one think that dire results to the white race would follow an enforcement of the restrictions? In the instant case the plat of land containing the restriction was of record. It was also a part of defendant's deed. He knew or should have known all about it. He did not have to buy the land, and he should have not bought it unless willing to observe the restrictions it contained.
>
> "The issue involved in the instant case is a simple one, i.e., shall the law applicable to restrictions as to occupancy contained in deeds to real estate be enforced, or shall one be *absolved from the provisions of the law* simply because he is a negro? The question involved is purely a legal one, and we think it was rightly solved by the chancellor under the decisions found in his opinion." (Italics supplied).

Cronan (1940) 105 Colo. 393, 98 P. (2d) 999; Dooley v. Savannah Bank and Trust Co. (1945) — Ga. —, 34 S. E. (2d) 522; Queensborough Land Co. v. Cazeaux, 136 La. 724, 67 So. 641; Meade v. Dennistone (1938) 173 Md. 295, 196 A 330 (Distinguishing private agreements from State legislation and city ordinances); Porter v. Johnson (1938) 232 Mo. App. 1150, 115 S. W. (2d) 529; Lion's Head Lake v. Brezezinski (1945) 23 N. J. Mis. R. 290, 43 A (2d) 729; Ridgeway v. Cockburn (1937) 296 N. Y. Supp. 936; Hemsley v. Hough (1945) — Okla. —, 156 P. (2d) 182 (Distinguishing restrictions created by private contract and race segregation ordinances); Hemsley v. Sage (1944) 194 Okla. 669, 154 P. (2d) 577.

[3] Porter v. Barrett (1925) 233 Mich. 373, 206 N. W. 532; Parmalee v. Morris (1922) 218 Mich. 625, 188 N. W. 330; Ericksen v. Tapert (1912) 172 Mich. 457, 138 N. W. 330.

Nor can petitioners' contention, that restrictive agreements are unenforceable where the parties to the action were not parties to the agreement, be sustained. The identical proposition was unsuccessfully urged in *Ericksen* v. *Tapert*, (1912) 172 Mich. 457, 138 N. W. 330; *Mays* v. *Burgess*, 79 App. D. C. 343, 147 F. (2d) 869, (certiorari denied, 325 U. S. 868); and in *Meade* v. *Dennistone*, 173 Md. 295, 196 A. 330.

> "The expressed purpose of the contract, and the fact that it was so executed as to entitle it to record clearly demonstrates that it was intended to be binding not alone upon the signers but upon all their successors in title as well. That the remedy may be had by and against grantees of the respective parties is authoritatively settled:"
>
> *Ericksen* v. *Tapert*, *supra*.

And the United States Court of Appeals for the District of Columbia observed:[4]

> "The form of the covenant is immaterial and it is not necessary it should run with the land. 'A personal covenant or agreement will be held valid and binding in equity on a purchaser taking the estate with notice. It is not binding upon him merely because he stands as an assignee of the party who makes the agreement, but because he has taken the estate with notice of a valid agreement concerning it which he cannot equitably refuse to perform.' Bryan v. Grosse, 155 Cal. 132, 99 P. 499, 501."

The representation that petitioners want the property as a home cannot have any legitimate effect. If equity were to refuse to enforce the rights of respondents solely because petitioners represent they wish to make the property their *home*, it would be an effective subterfuge and device on the part of the excluded race to make such claim in each instance, and thereafter exercise their right under the fee to

[4] Mays v. Burgess, 79 App. D. C. 343, 147 F. (2d) 869, certiorari denied 325 U. S. 868.

do whatever they desire with the property. Certainly the right to enforcement should not be conditioned on anything as uncertain as this, for death, adversity or mere caprice can terminate use as a home.

The Supreme Court of Michigan in the present case, after full consideration of the contentions of petitioners, sustained the enforceable contract rights of respondents.

(b) Restrictive agreements are compatible with the declared public policy of the State of Michigan; there is no applicable Federal policy.

Petitioners go so far as to propose that the United Nations Charter prohibits restrictive agreements. While the Charter expresses "a desirable social trend and an objective devoutly to be desired by all well-thinking peoples"[5] it does not affect the subjects of one of the member nations in their private contractual relations; it specifically excludes from its operation matters which are within the domestic, as distinguished from international, jurisdiction of the member nations;[6] and Congress has not enacted any legislation on the subject affecting such private rights.[7]

The Supreme Court of Michigan in its opinion in this case[8] considers carefully the question of whether the indenture is invalid as being against the public policy of the State; the Court concludes it is not. This conclusion is not reviewable[9] and is conclusive as to contracts affecting land in the State of Michigan.

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[5] Opinion of Supreme Court of Michigan, Record p. 67.

[6] Charter of the United Nations and Statutes of International Court of Justice, Art. 2, Ch. 1, Par. 7.

[7] *Infra*, p. 16.

[8] Record, pp. 63, 64, 65 and 67.

[9] Erie Railroad Co. v. Tompkins, 304 U. S. 64.

(c) The Fourteenth Amendment of the Constitution of the United States and implementing statutes do not prohibit judicial enforcement of the restriction.

The most serious and utterly fallacious proposition of petitioners is their contention that a State Court is prohibited from enforcing, by appropriate remedy, the solemn recorded contracts of private individuals in relation to their private property rights. They charge that such judicial action is prohibited by the Fourteenth Amendment of the Federal Constitution and implementing statutes.

They say the Constitution prohibits any State from depriving any person of property without due process of law; they reason that because this Court has held invalid *legislative* acts relating to zoning based on race or color, all contracts between private individuals relating to their private property rights must, *inter alia*, be declared void. While they urge they are denied their property without due process of law, they fail, and possibly refuse, to recognize that the respondents are likewise entitled to the Constitutional guarantees, as individuals, that no State shall deprive *them* of their property without due process of law. Heretofore[10] it has been shown that the right to the enforcement of such restrictive agreements is a valuable property right. Only by completely casting aside fundamental and underlying Constitutional principles protecting all citizens of a State, can petitioners' position be sustained. The rights secured to all citizens must apply to all citizens.[11]

Under our judicial system courts are established to give to all citizens the opportunity to have their private rights, in their dealings one with another, adjudicated by impartial tribunals. While the power of a court is derived from the people through their Constitutions and statutes, State and Federal, and in that sense are representative of governmental authority, it must be clear that never has it been

[10] *Supra*, p. 5.

[11] Porter v. Johnson, 232 Mo. App. 1150, 115 S. W. (2d) 529, 533.

seriously questioned that the judiciary is a separate and unique form of governmental function.[12] If this were not so, private citizens could not fearlessly attack legislative and executive action before the courts. The Courts are the guardians of the private rights of all citizens—in their relations with other citizens respecting their personal and property rights and in their relations with government, be it Federal or State. The Courts do not hesitate to hold legislative enactments and administrative activities of the Executive branch to infringe the rights of private citizens; nor do courts hesitate to adjudicate the innocence of persons charged with crime. Yet, it is the Executive branch of government which claims a crime has been committed. If the Courts were government, as urged by petitioners, there could be no trial, for when the Executive says a criminal act has been committed its alter ego—the courts—would function only to commit to jail, performing a mere ministerial function dictated by the Executive. This is obviously not our system; indeed it is a practice which we have strenuously criticized and condemned foreign powers for following. The power of the judiciary as an independent agency, to examine and nullify Acts of Congress, has been recognized since *Marbury* v. *Madison*, 1 Cr. 137, and this is no less true as to State courts with respect to State laws. The courts are not concerned with political issues, as emphasized in *Georgia* v. *Stanton*, 6 Wall. 50, where it was sought to restrain the putting into effect of an Act of Congress providing for military government in Georgia:

> "For the rights, for the protection of which our authority is invoked, are the rights of sovereignty, of political jurisdiction, of government, of corporate existence of a State, with all its constitutional powers and privileges. No case of private rights or private property infringed, or in danger of actual or threatened infringement, is presented by the bill, in a judicial form, for the judgment of the Court."

[12] United States v. Dunnington, 146 U. S. 338.

But where a State or the Federal Government improperly exercises its governmental functions so as to constitute invasion of private rights, the Courts will take jurisdiction.

Cohens v. *Virginia*, 6 Wheat. 264
Lane v. *Watts*, 234 U. S. 525

Petitioners' thesis is that the State court, exercising its general jurisdiction in equity, has denied petitioners their property rights without due process of law contrary to the Fourteenth Amendment of the Constitution. They say this is true because the court is *government*, and government is prohibited from taking property without due process of law. Their charge is based on this Court's opinion in *Buchanan* v. *Warley*, 245 U. S. 60. They read into the language that which is not and cannot be there. This Court clearly stated the question to be decided:

> "The concrete question here is: May the occupancy, and, necessarily, the purchase and sale of property of which occupancy is an incident, be inhibited by the states, or by one of its municipalities, solely because of the color of the proposed occupant of the premises?"

and the Court's decision held specifically that the attempt of the State by *municipal ordinance* to prevent alienation and use of property to a person solely because of color was not "a legitimate exercise of the police power of the state". Certainly no one seriously will argue that the functions of a court are the "exercise of the police power of the state". The Courts of the land are the only place where citizens may go to be relieved from the improper or oppressive exercise of the police power of the States; if that were not so the Constitutional guarantees would be mere guides to conscience rather than effective to assure protection to all citizens. This Court has said that "the function of courts in the application of the Fifth and Fourteenth Amendments is to determine in each case whether circumstances vindicate the challenged *regulation* as a reasonable exertion of

governmental authority or condemn it as arbitrary or discriminatory." (*Nebbia* v. *New York* (1934), 291 U. S. 502, 536.) It is too fundamental to require more than the mere observation that many acts of the Federal Government and the States, claimed to be discriminatory, do not involve negroes. Petitioners appear to take the position that only negroes are discriminated against; they do not concede that the courts are the only place where law-abiding citizens of any color may obtain equal protection of the laws and save themselves from being deprived of their property without due process of law.

Here, respondents have defined property rights; the petitioners took title to their property subject to the pre-existing rights of respondents. If respondents could not enforce these property rights through the courts of their State certainly they would be denied due process of law; they would be denied the privileges and immunities guaranteed to them under the same Amendment; and they would be denied the application of the fundamental rules of equity.[13]

The California Court in *Burkhardt* v. *Lofton* (1944) 63 Cal. App. (2d) 230, 146 P. (2d) 720, stated:

> "The decree of the trial court in the instant case was not, within constitutional principles, action by the State through its judicial department. Plaintiffs' rights are derived from their contract, the subject matter of which belonged exclusively to the contracting parties * * * if the contract is valid it cannot be nullified under any theory that courts are without power to enforce it."

In discussing the Constitutional guarantees relating to the right of private contract, this Court in *Home Building and Loan Association* v. *Blaisdell*, 290 U. S. 398, speaking through Mr. Chief Justice Hughes, stated, beginning at page 429:

> "The obligation of a contract is 'the law which binds the parties to perform their agreement.' Sturges v. Crowninshield, 4 Wheat. 122, 197, Story, op. cit., Sec.

[13] Porter v. Johnson, *supra*.

1378. This Court has said that "the laws which subsist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it, as if they were expressly referred to or incorporated in its terms. This principle embraces alike those which affect its validity, construction, discharge and enforcement . . . *Nothing can be more material to the obligation than the means of enforcement. . . . The ideas of validity and remedy are inseparable*, and both are parts of the obligation, which is guaranteed by the Constitution against invasion'. * * * * 'It is competent for the States to change the form of the remedy, or to modify it otherwise, as they may see fit, *provided no substantial right secured by the contract is thereby impaired.* No attempt has been made to fix definitely the line between alterations of the remedy, which are to be deemed legitimate, and those which, under the form of modifying the remedy, *impair substantial rights.* Every case must be determined upon its own circumstances.' And Chief Justice Waite, quoting this language in Antoni v. Greenhow, 107 U. S. 769, added: 'In all cases the question becomes therefore, one of reasonableness, *and of that the legislature is primarily the judge.*'" (Italics supplied)

Where has there been a denial of due process? What due process do petitioners expect to be afforded? They were not required to buy the property when they knew of the pre-existing rights therein of adjacent property owners. But having acquired it with full knowledge of this enforceable right, they were required to conform to that right. Failing in this, respondents did what all law-abiding citizens must do—looked to their Courts for enforcement.

All necessary parties[14] were before the Court and the course of the proceedings as disclosed by the record herein is ample proof that petitioners were not denied due process of law.

"The fundamental requirement of due process is an opportunity to be heard upon such notice and proceedings as are adequate to safeguard *the right for which*

[14] Burkhardt v. Lofton, 63 Cal. App. 230, 146 P. (2d) 720.

the constitutional protection is invoked. If these are preserved, the demands of due process are fulfilled." (Italics supplied)

Anderson National Bank v. *Luckett*, 321 U. S. 233, 246.

See also: *Davidson* v. *New Orleans*, 96 U. S. 97.

If respondents were barred from securing these rights there is no doubt that they would be deprived of their property without due process of law.

Petitioners' contentions are not new. They were strenuously urged in *Corrigan* v. *Buckley*, 271 U. S. 323 (1926) and in the Court of Appeals for the District of Columbia (now the United States Court of Appeals for the District of Columbia) notwithstanding the statement of petitioners that the "issue here presented was neither presented or decided there."[15] An examination of the briefs, as well as recollection of the argument, in both Courts indicates clearly that the precise propositions were thoroughly treated. At page 329 of the opinion[16] this Court states that "this appeal was allowed in June, 1924" because defendants claimed the case was one involving the construction and application of the Constitution and certain laws of the United States (Sections 1977, 1978 and 1979 of the Revised Statutes). The opinion states:

> "And under well-settled rules jurisdiction is wanting if such questions are so unsubstantial as to be plainly without color of merit and frivolous."

This is not to say the Court did not consider the questions; it *does* mean that this Court after considering the very same contentions now being advanced, found them to be "so unsubstantial as to be plainly without color of merit and frivolous." Respondents submit that this is precisely what petitioners' contentions are—unsubstantial and without merit.

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[15] Petitioners' Brief, p. 43.

[16] 271 U. S. 323.

This Court specifically held at page 330 of the opinion:

> "The Fifth Amendment 'is a limitation only upon the powers of the general government,' (citing cases) and is not directed against the action of individuals. * * * And the prohibitions of the Fourteenth Amendment 'have reference to state action exclusively, and not to any action of private individuals'. Virginia v. Rives, 100 U. S. 313, 318; United States v. Harris, 106 U. S. 629. 'It is state action of a particular character that is prohibited. Individual invasion of individual rights is not the subject-matter of the Amendment.' Civil Rights Cases, 109 U. S. 3, 11. *It is obvious that none of these Amendments prohibited private individuals from entering into contracts respecting the control and disposition of their own property; and there is no color whatever for the contention that they rendered the indenture void.*" (Italics supplied)

On the contention of the appellants in the *Corrigan* case that the action of the Court was the action of government and prohibited by the Fifth and Fourteenth Amendments (the precise contention now insisted upon by petitioners), this Court said, by way of recapitulation, at page 331:

> "The defendants were given a full hearing in both courts; they were not denied any *constitutional* or *statutory* right; and there is no semblance of ground for any contention that the decrees were so plainly arbitrary and contrary to law as to be acts of mere spoliation. (Citing case) Mere error of a court, if any there be, in a judgment entered after a full hearing, does not constitute a denial of due process of law (citing case)." (Italics supplied)

The injunctive relief granted in *Corrigan* v. *Buckley* was substantially the same as that granted by the Michigan Court.

Thus this Court, *nine* years after *Buchanan* v. *Warley*, *supra*, clearly and decisively distinguished between the constitutional validity and enforceability by the courts of individual property rights, and *state action* relating to con-

trol of property because of race or color. The former is sustained, the latter is prohibited.

As previously urged in *Corrigan* v. *Buckley, supra,* petitioners urge that the judicial enforcement of the covenant violates Section 1978 of the Revised Statutes of the United States (8 U. S. C. Sec. 42). Here again petitioners distort the clear meaning of the language of this Court in *Corrigan* v. *Buckley, supra,* at page 331:

> "Assuming that this contention drew in question the 'construction' of these statutes, as distinguished from their 'application', it is obvious, upon their face, that while they provide, inter alia, that all persons and citizens shall have equal right with white citizens to make contracts and acquire property, they, like the constitutional Amendment under whose sanction they were enacted, do not in any manner prohibit or invalidate contracts entered into by private individuals in respect to the control and disposition of their own property."

Here again is the clear distinction between enforceable private rights and the restraints on governmental power.

With equal clarity the Court of Appeals in *Corrigan* v. *Buckley,* 55 App. D. C. 30, 299 F. 899, with reference to the applicability of Sections 1977, 1978 and 1979, Revised Statutes, stated at page 32:

> "Defendant claims protection under certain legislation of Congress. As suggested in the opinion of the learned trial justice, this legislation was enacted to carry into effect the provisions of the Constitution. The statutes, therefore, can afford no more protection than the Constitution itself. If, therefore, there is no infringement of defendants' rights under the Constitution, there can be none under the statutes."

2. Social and Political Problems of a State Must Be Addressed to the Legislature Not the Courts.

It must be emphasized that such matters as health, housing, crime and the other problems that undoubtedly are acute among Negro citizens, must be addressed to the legis-

lature of the State in the exercise of the police power. Neither this Court nor the courts of the State of Michigan can correct or remedy the conditions complained of. The thirty-six pages of petitioners' brief devoted to these sociological problems would indicate many and varied individuals, organizations and even governmental agencies have devoted much time and effort to the problem. The Supreme Court of Michigan, not unmindful of these problems, although not part of the record in the case, nevertheless declared the indentures to be not against the public policy of that State, and that declaration is conclusive.

CONCLUSION.

The able opinion of the Supreme Court of Michigan indicates serious consideration was given to every point now urged.

It is respectfully submitted that the judgment herein should be sustained.

HENRY GILLIGAN,
JAMES A. CROOKS,
Attorneys for Respondents.

Date: December 1, 1947.

Mr. Lloyd T. Chockley, of Detroit, Michigan, counsel for respondents, died during the pendency of the case in this Court.